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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/067,569	02/05/2002	Dusan Miljkovic	STI.001A	5844
20995	7590	09/22/2004	EXAMINER	
KNOBBE MARTENS OLSON & BEAR LLP			GEORGE, KONATA M	
2040 MAIN STREET			ART UNIT	
FOURTEENTH FLOOR			PAPER NUMBER	
IRVINE, CA 92614			1616	

DATE MAILED: 09/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/067,569

Applicant(s)

MILJKOVIC ET AL.

Examiner

Konata M. George

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11, 17-29 and 48-52 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11, 17-29 and 48-52 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

Claims 1-11, 17-29 and 48-52 are pending in this application.

#### ***Information Disclosure Statement***

1. The information disclosure statement (IDS) submitted on July 9, 2004 was noted and the submission is in compliance with the provisions of 37 CFR 1.97. However, since none of the references were supplied with the application, examiner will not consider the references. If applicant would like the IDS considered, please submit a copy of the references.

#### ***Action Summary***

2. Examiner acknowledges the cancellation of non-elected claims 12-16, 30-47 and 53-64, without prejudice.
3. The rejection of claims 1-3, 7-9 and 48 under 35 U.S.C. 102(b) as being anticipated by Policappelli et al. is being maintained for the reasons stated in the previous office action.
4. The rejection of claims 1-9, 11, 17-29, 48-52, 58 and 59 under 35 U.S.C. 102(b) as being anticipated by Drunnen et al. is being maintained for the reasons stated in the previous office action.
5. The rejection of claims 10 and 49-52 under 35 U.S.C. 103(a) over Policappelli et al. is being maintained for the reasons stated in the previous office action.

***Response to Arguments***

6. Applicant's arguments filed July 9, 2004 have been fully considered but they are not persuasive.

Applicants' argue that neither of the prior art references teaches that the extract from an agricultural by-product is detoxified. Examiner disagrees.

Policappelli et al. is directed towards dietary supplement for use as a method of weight loss. As such, it is the position of the examiner that since this composition is used for human consumption then, the composition would not contain any toxic substances whether it is natural or artificial. If one of ordinary skill in the art were preparing an extract from an agricultural by-product for use in human consumption that may also contain a toxic component, it would have been inherent and obvious to remove the toxic portion by means of a detoxifying step.

Drunnen et al. is directed towards a process for enriching food and beverages for human consumption. Drunnen et al. disclose a method for obtaining the extract which comprises several steps which includes a purification procedure. It is the position of the examiner that during this procedure any potentially toxic material is removed from the extract. Column 3, lines 40-42 states, "If needed, the extract is purified as desire... For example, by selective absorption or selective extraction of an unwanted constituent, such as caffeine." It is the position of the examiner that any that is toxic is considered an "unwanted constituent" and would not be used in a composition for human consumption.

***Conclusion***

7. Claims 1-11, 17-29 and 48-52 stand rejected.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

***Telephone Inquiries***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Konata M. George, whose telephone number is (571) 272-0613. The examiner can normally be reached from 8AM to 6:30PM Monday to Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz, can be reached at (571) 272-0887. The fax phone numbers for

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the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-1600.

Konata M. George

  
GARY KUNZ  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600